

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: Mark Kutney, AICP, Development Services Director/(954) 797-1101
Prepared by Todd Vargo, Planner I

SUBJECT: Resolution - Developers Agreement
DA 4-1-03 Pem-Mar Seventh Day Adventist Church, 3375 NW 74 Avenue/
Generally located at the northwest corner of NW 74 Avenue and Davie Road
Extension.

AFFECTED DISTRICT: District 2

TITLE OF AGENDA ITEM:

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT BETWEEN THE TOWN OF DAVIE, BROWARD COUNTY, AND THE FLORIDA CONFERENCE ASSOCIATION OF SEVENTH-DAY ADVENTISTS, FOR REGIONAL ROAD CONCURRENCY RELATING TO THE SEVENTH DAY PLAT; PROVIDING FOR RESTRICTIONS TO SATISFY CONCURRENCY REQUIREMENTS; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF: On December 15, 1993, Town Council passed Resolution R-93-275, approving a subdivision plat consisting of 8.77 acres for the development of 21,500 square feet of church use. The restrictive note on the plat was amended on April 6, 1994 by Resolution R-94-108 to limit the plat to 35,000 square feet of church use.

In order to satisfy roadway concurrency for this plat, the developer is entering into a Concurrency Agreement Limitation of Hours of Use of Facilities. The developer has agreed to limit the hours of use of the church facilities as shown in Exhibit "B" of the agreement. The Town is party to this Developers Agreement solely for the purpose of issuing or withholding the issuance of permits for the construction of buildings within the property subject to the agreement and for the purpose of issuing or withholding the issuance of certificates of occupancy for the construction of buildings within the property subject to the agreement. The agreement states that upon notice from the County that the Developer is in default of the agreement, the Town shall withhold issuance of all building permits, certificates of occupancy, or any other development permits for any development within the boundaries of the plat until such time that the County notifies the Town that the default has been resolved.

PREVIOUS ACTIONS: None

CONCURRENCES: None

FISCAL IMPACT: None

RECOMMENDATION: Staff finds the subject application complete and suitable for transmittal to Town Council for further consideration.

Attachments: Resolution, Concurrency Agreement Limitation of Hours of Use of Facilities, Future Land Use Map, Zoning and Aerial Map

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT BETWEEN THE TOWN OF DAVIE, BROWARD COUNTY, AND THE FLORIDA CONFERENCE ASSOCIATION OF SEVENTH-DAY ADVENTISTS, FOR REGIONAL ROAD CONCURRENCY RELATING TO THE SEVENTH DAY PLAT; PROVIDING FOR RESTRICTIONS TO SATISFY CONCURRENCY REQUIREMENTS; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Florida Conference Association of Seventh-Day Adventists proposes to develop properties known as the Seventh Day Plat; and

WHEREAS, Broward County requires restrictions to satisfy concurrency requirements related to the Seventh Day Plat.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council of the Town of Davie does hereby authorize the Mayor and Town Administrator to enter into an Agreement, attached hereto as Exhibit "A", between Broward County, the Florida Conference Association of Seventh-Day Adventists, and the Town of Davie, whereby the Town of Davie, upon notification from the County that the Developer is in default of the Agreement, shall not issue any building permits, certificates of occupancy, or any other development permits within the boundaries of the plat, until such time that the County notifies the Town that the default has been resolved.

SECTION 2. The Town Administrator and Town Attorney are authorized to make and accept non-substantive revisions to the agreement in order for the agreement to be in final, recordable form.

SECTION 3. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS ____ DAY OF _____, 2003.

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2003.

Return recorded document to:

Development Management Division
115 S. Andrews Avenue, A240
Fort Lauderdale, FL 33301

Document prepared by:

Regina Bobo-Jackson
Gator Engineering Consultants, P.A.
8910 Miramar Parkway, Suite 208
Miramar, FL 33025

**CONCURRENCY AGREEMENT
LIMITATION OF HOURS OF USE OF FACILITIES**

This is an Agreement, made and entered into by and between: BROWARD COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY,"

AND

Florida Conference Assoc. of Seventh-day Adventists, its successors and assigns, hereinafter referred to as DEVELOPER,

[AND IF THE PROPERTY IS LOCATED WITHIN A MUNICIPALITY]

The Town of DAVIE, a municipal corporation, created and existing under the laws of the State of Florida, its successors and assigns, hereinafter referred to as "TOWN."

WHEREAS, Chapter 5, Article IX, Broward County Code of Ordinances, requires that the Regional Transportation Network be adequate to serve the reasonably projected needs of proposed developments; and

WHEREAS, Chapter 5, Article IX, Broward County Code of Ordinances, more specifically requires that an application for a development permit satisfy concurrency requirements for impact areas; and

WHEREAS, DEVELOPER has applied for a new Findings of Adequacy for the **Seventh Day Plat (059-MP-97)**, hereinafter referred to as "PLAT," more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, on March 20, 2003, the Broward County Development Management Division issued a Notification of Failure to Satisfy Broward County Concurrency Standards for the regional transportation network, finding that the application for a new Findings of Adequacy for the PLAT does not satisfy the impact area concurrency standards for the regional road network as stated in the Broward County Land Development Code ("CODE"); and

WHEREAS, the DEVELOPER seeks to satisfy this requirement with respect to the proposed development of the PLAT which falls within the impact area of University Drive between Davie Road Extension and Taft Street, by entering into this Regional Road Concurrency Agreement for the limitation of the hours of use of the facilities to be located within the PLAT, NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, the parties agree as follows:

1. The above recitals and representations are true and correct and are incorporated herein.
2. DEVELOPER agrees to restrict the use of the facilities located within the area covered by the PLAT in accordance with Exhibit "B".
3. DEVELOPER agrees to provide the COUNTY, prior to October 1 of each year, with a written affidavit certifying that the restrictions contained in Exhibit "B" continue to be met.
4. DEVELOPER agrees that employees or agents of COUNTY may observe activity within the PLAT, from time to time, without notice to DEVELOPER, in order to verify compliance with this Agreement.
5. COUNTY and TOWN (if applicable) find that execution of and adherence to this Agreement on the part of DEVELOPER satisfies the requirement of Chapter 5, Article IX, Broward County Code of Ordinances, that plats of land shall be designed to provide for the adequacy of the regional road network, at the adopted levels of service, concurrent with the impact of the development. Nothing in this Agreement shall be construed as constituting a waiver or an exemption from road impact fees authorized to be assessed by COUNTY to DEVELOPER under the provisions of Chapter 5, Article IX, Broward County Code of Ordinances.

6. PROPERTY WITHIN A MUNICIPALITY.

- (a) If the property is located within a municipality, TOWN agrees that, upon notification from the COUNTY that DEVELOPER is in default of this Agreement, TOWN shall withhold issuance of all building permits, certificates of occupancy, or any other development permits within the boundaries of the PLAT, until such time that the COUNTY notifies the TOWN that the default has been resolved. If the property is located within the unincorporated area and the DEVELOPER is determined to be in default of this Agreement by the COUNTY, the COUNTY shall withhold issuance of all building permits, certificates of occupancy, or any other development permits within the boundaries of the PLAT, until such time as the default has been resolved.
 - (b) If the property is located within a municipality, the parties hereto agree that, except as may otherwise be provided herein, the TOWN is a party to this Agreement solely for the purpose of issuing or withholding the issuance of permits for the construction of buildings within the property subject to this Agreement and for the purpose of issuing or withholding the issuance of certificates of occupancy for the construction of buildings within the property subject to this Agreement. The parties specifically agree and recognize that nothing in this Agreement is a waiver, specific or otherwise, of the obligation of the DEVELOPER to strictly comply with all the requirements of the TOWN's land development codes.
7. This Agreement shall continue to be in full force and effect and may be enforced against the DEVELOPER or its successors or assigns by the COUNTY through a Court of competent jurisdiction should the DEVELOPER or its successors or assigns fail to restrict the facilities in accordance with Exhibit "B."
8. If traffic capacity on the affected road segment(s) becomes available, so that such road segment(s) operate(s) at an acceptable level of service including the traffic generated by the PLAT, and the DEVELOPER is able to demonstrate such change in circumstances to the COUNTY and the TOWN (if applicable), DEVELOPER may request and amendment to this agreement to eliminate those restrictions that are determined to no longer be necessary to mitigate the traffic impacts of the PLAT.
9. NOTICE. Whenever any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving of notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving notice:

For the COUNTY:

Director, Development Management Division of Broward County
115 South Andrews Avenue, Room A240
Fort Lauderdale, FL 33301

For the DEVELOPER:

For the TOWN:

10. RECORDATION. This Agreement shall be recorded in the Public Records of Broward County Florida, at the DEVELOPER'S expense. The benefits and obligations contained in this Agreement shall inure to grantees, successors, heirs, and assigns who have an interest in the PLAT.
11. VENUE; CHOICE OF LAW. Any controversies or legal issues arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State Courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue sitis, and shall be governed by the laws of the State of Florida.
12. CHANGES TO FORM AGREEMENT. DEVELOPER represents and warrants that there have been no amendments or revisions whatsoever to the form Agreement without the prior written consent of the County Attorney's Office. Any unapproved changes shall be deemed a default of this Agreement and of no legal effect.
13. CAPTIONS AND PARAGRAPH HEADINGS. Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement, nor the intent of any provisions hereof.
14. NO WAIVER. No waiver of any provision of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.
15. EXHIBITS. All Exhibits attached hereto contain additional terms of this Agreement and are incorporated herein by reference. Typewritten or handwritten provisions inserted in this Agreement or attached hereto shall control all printed provisions in conflict therewith.

16. FURTHER ASSURANCES. The parties hereby agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all further assurances and to perform such acts as shall reasonably be requested of them in order to carry out this Agreement.
17. ASSIGNMENT AND ASSUMPTION. DEVELOPER may assign all or any portion of its obligations pursuant to this Agreement to a grantee of the fee title to all or any portion of the property described in Exhibit "A." DEVELOPER agrees that any assignment shall contain a provision which clearly states that such assignment is subject to the obligations of this Agreement.
18. AMENDMENTS. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the parties to this Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have made and executed this Regional Road Concurrency Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice Mayor, authorized to execute same by Board action on the ____ day of _____, 20____, _____, signing by and through its _____, duly authorized to execute same and, if applicable, the TOWN of DAVIE, signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, through its
BOARD OF COUNTY COMMISSIONERS

County Administrator and
Ex-Officio Clerk of the
Board of County Commissioners
of Broward County, Florida

By _____
Mayor

____ day of _____, 20____

Approved as to form by
Office of County Attorney
Broward County, Florida
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-6968

By _____
Assistant County Attorney

____ day of _____, 20____

DEVELOPER-CORPORATION/PARTNERSHIP

Witnesses (if partnership):

C. Duncanson
(Signature)
Printed Name: Cynthia Duncanson

Kara Connatser
(Signature)
Print name: Kara Connatser

Florida Conference Association of
Seventh-day Adventists

Name of Developer (corporation/partnership)

By Randee R. Reynolds
(Signature)

Printed Name: Randee R. Reynolds

Title: Vice President

Address: 655 N. Wymore Road
Winter Park, Fl. 32789

31st day of March, 2003

ATTEST (if corporation):

Robert C. Seal
(Secretary Signature)
Print Name of Secretary: Robert C. Seal

(CORPORATE SEAL)

ACKNOWLEDGMENT - CORPORATION/PARTNERSHIP

STATE OF Florida)
) SS.
COUNTY OF Orange)

The foregoing instrument was acknowledged before me this 31st day of March, 2003, by Randee R. Reynolds and Robert C. Seal, as Vice President and Secretary, respectively of Florida Conference Association of Seventh-day Adventists, a Florida corporation/partnership, on behalf of the corporation/partnership. They are:

(x) personally known to me, or
() produced identification. Type of identification produced _____.

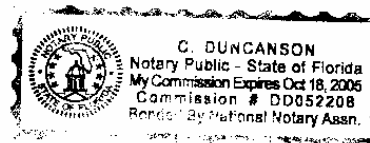
(Seal)

My Commission expires:

NOTARY PUBLIC:

C. Duncanson
Print name: C. Duncanson

CAF#360
01/01/02



TOWN
(If Property is located within a TOWN)

WITNESSES:

TOWN of _____

By _____
Mayor-Commissioner

____ day of _____, 20____

ATTEST:

Town Clerk

By _____
Town Manager

____ day of _____, 20____

APPROVED AS TO FORM:

By _____
Town Attorney

EXHIBIT "A"

LEGAL DESCRIPTION

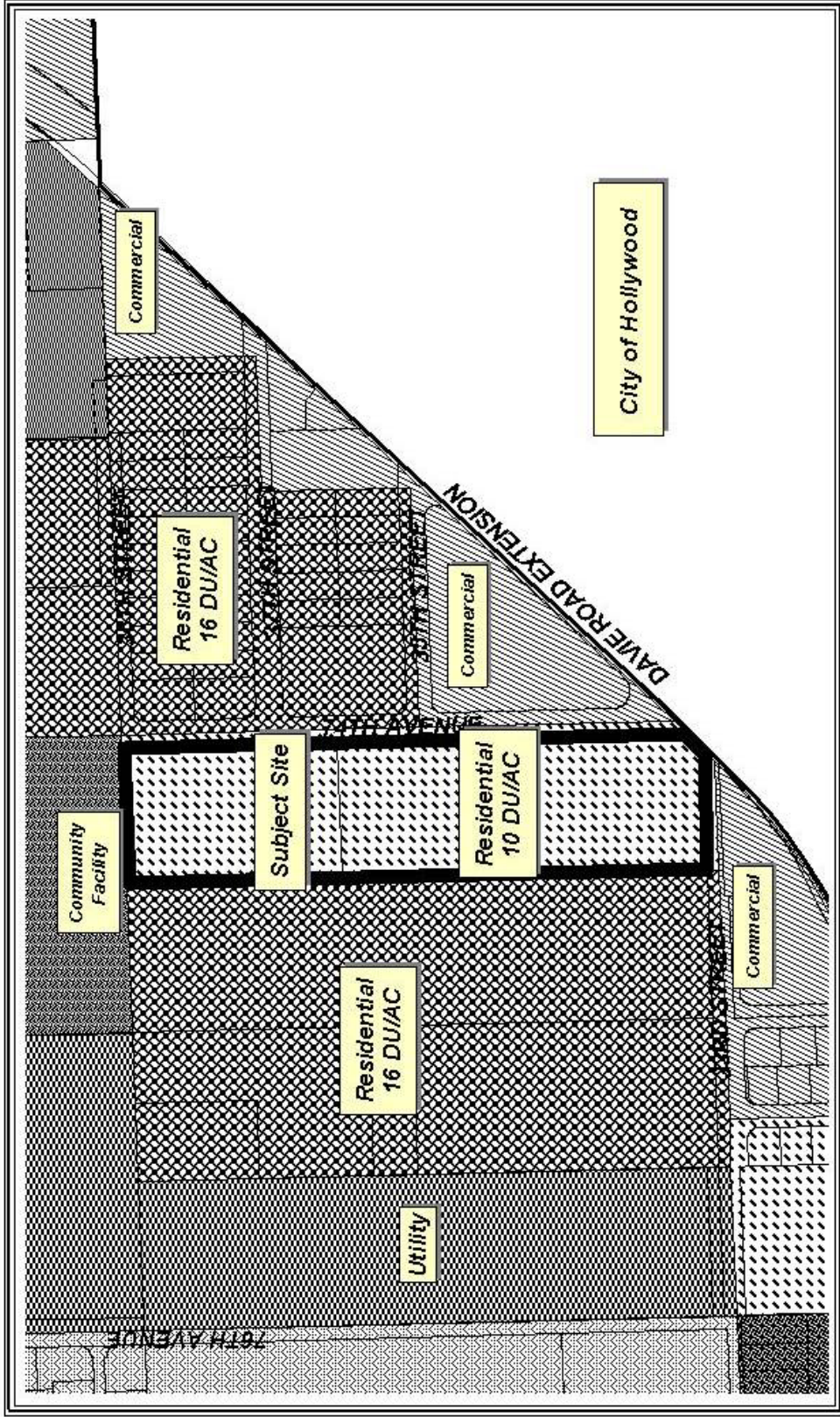
PARCEL 'A' OF "SEVENTH DAY PLAT",
ACCORDING TO PLAT THEREOF AS RECORDED
IN PLAT BOOK 167, PAGE 45, OF THE
PUBLIC RECORDS OF BROWARD COUNTY,
FLORIDA, TOGETHER WITH THAT PORTION OF
N.W. 33RD STREET AS SHOWN ON SAID PLAT
(NOW VACATED PER OFFICIAL RECORD BOOK
31574, PAGE 1938, OF THE PUBLIC
RECORDS OF BROWARD COUNTY, FLORIDA),
LYING BETWEEN THE SOUTHERLY EXTENSION
OF THE WEST LINE SAID PARCEL 'A' AND
THE SOUTHERLY EXTENSION OF THE EAST
LINE OF SAID PARCEL 'A' (ALSO BEING THE
NORTHERLY RIGHT-OF-WAY LINE OF DAVIE
ROAD EXTENSION).

EXHIBIT "B"

RESTRICTIONS

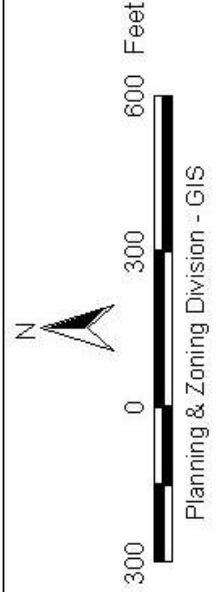
PLEASE CHECK THE APPROPRIATE BOX OR BOXES.

- ☐ All vehicular traffic shall be prohibited from entering or exiting the site between 7:00a.m. and 9:00a.m. and 4:00p.m. and 6:00p.m., Monday through Friday, except for any incidental trips not related to any scheduled services or events.
- ☐ Other restrictions as set forth below:

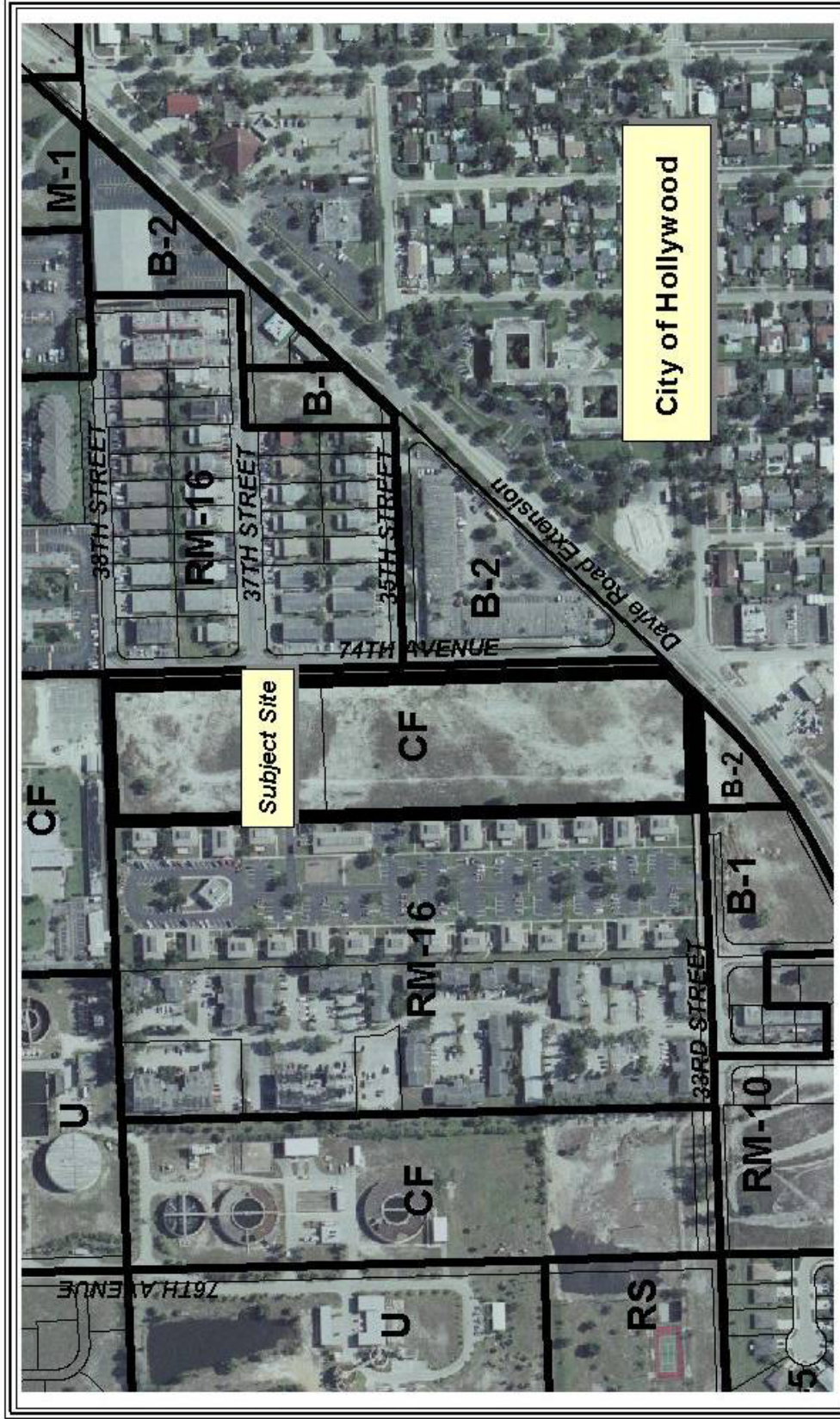


DEVELOPERS AGREEMENT **DA 4-1-03** **Future Land Use Map**

Prepared By: TAV
 Date Prepared: 5/1/03



Planning & Zoning Division - GIS



Date Flown:
12/31/00



300 0 300 600 Feet

Planning & Zoning Division - GIS



DEVELOPERS AGREEMENT DA 4-1-03 Zoning and Aerial Map

Prepared By: TAV
Date Prepared: 5/1/03